

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DEBBIE OWEN on behalf of others similarly
situated,

Plaintiff,

v.

LABOR READY, INC., a Washington
corporation,

Defendant.

Case No. C03-5566FDB

ORDER DENYING PLAINTIFF'S
MOTION TO MODIFY
SCHEDULING ORDER AND
PRECLUDING PLAINTIFF FROM
MOVING FOR CLASS
CERTIFICATION

Plaintiff Owen alleges that she was deprived of compensation for overtime hours worked, and she seeks to bring this as a class action on behalf of herself and similarly situated former and current employees of Defendant Labor Ready, Inc. alleging violations of the Fair Labor Standards Act (FLSA).

This case was originally filed October 21, 2003. Plaintiff served her first interrogatories on January 8, 2004, and Defendant timely responded February 6, 2004. By order of February 13, 2004, this Court consolidated this action with the *Huntley* case, C03-5720RBL and stayed the consolidated matter pending the outcome of a California case filed in February 2003 in California, which alleges similar claims under the FLSA.

1 On September 27, 2005, the Court ordered a Joint Status Report and set trial and pretrial
2 dates according to that JSR on December 2, 2005. A trial date of April 2, 2007 was set, with
3 discovery cut-off on December 4, 2006, and dispositive motions due December 22, 2006. The
4 mediation compliance letter is due December 13, 2006.

5 Plaintiff Owen now seeks to modify the current scheduling order asserting that Defendant has
6 not yet responded to Owen's January 2004 interrogatories; that Plaintiff has been prevented from
7 completing the deposition of Labor Ready's corporate designee owing to inadvertent failure to
8 record the December 4, 2006 discovery cut-off date and inability to arrange a mutually convenient
9 deposition date; and that there is presently a motion pending to stay or dismiss the California lawsuit
10 in order to transfer it to this court.

11 Defendant Labor Ready responds showing that it has responded to the January 2004
12 interrogatories and has timely filed answers to the amended complaints as well. Owing to a pending
13 trial, Defendant will not be available for a deposition until the second week of December and is
14 agreeable to conducting a deposition of Defendant's corporate designee at Plaintiff's counsel's
15 convenience following discovery cut-off. Labor Ready has also demonstrated a willingness to
16 mediate.

17 Defendant also asserts that Plaintiff failed to move for class certification under Local Rule
18 23(f)(3) within 180 days after filing the initial complaint, and that excluding the time that this case
19 was stayed, Plaintiff is over 398 days late in filing its class certification motion.

20 Plaintiff argues that the Local Rules provide that the Court may otherwise order with respect
21 to the class action motion, and that it has done so by its Scheduling Order setting the motions
22 deadline as December 22, 2006.

23 Plaintiff's argument is unconvincing, as had the Court desired to alter the class action motion
24 date in its scheduling order, it would have specifically done so. Defendant also points out that
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1 Plaintiff has not obtained the written consent of any party seeking to opt-in to this action. (See 29
2 U.S.C. § 216(b).)


3 Considering all the circumstances, the Court declines to alter the schedule originally set and
4 concludes that Plaintiff is precluded from moving for class certification.

5 ACCORDINGLY, IT IS ORDERED:

6 (1) Plaintiff's Motion To Modify Rule 16 Scheduling Order [Dkt. # 61] is DENIED; and

7 (2) Plaintiff is precluded from moving for class certification.

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9 DATED this 1st day of December, 2006.

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12 FRANKLIN D. BURGESS
13 UNITED STATES DISTRICT JUDGE
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